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96TH CONGRESS
2d Session

SENATE

REPORT
No. 96-1042

RELATING TO PUBLIC ACCESS TO SENATE RECORDS AT THE NATIONAL ARCHIVES

DECEMBER 1 (legislative day, NOVEMBER 20), 1980.—Ordered to be printed

Mr. ROBERT C. BYRD (for Mr. PELL), from the Committee on Rules and Administration, submitted the following

COMPLETED

REPORT

[To accompany S. Res. 474]

The Committee on Rules and Administration, to which was referred the resolution (S. Res. 474) relating to public access to Senate records at the National Archives, having considered the same, reports favorably thereon with amendments to the text and an amendment to the preamble, and recommends that the resolution as amended be agreed to.

PURPOSE

On February 24, 1977, the Temporary Select Committee to Study the Senate Committee System recommended, with regard to Senate committee records, that:

> The Senate adopt a resolution directing that all noncurrent committee records be opened within a certain reasonable time after their creation except where a committee declares that personal privacy, national security, or other national interest requiries continued confidentiality. Each committee should state clearly which records may be made available earlier than the time period specified in the resolution and under what procedures. All statements of committee policy governing access to non-current records should be published in the Congressional Record and filed with the Secretary of the Senate, the Senate Historical Office, and the Archivist.

Five weeks later, on March 31, 1977, the National Study Commission on the Records and Documents of Federal Officials, in its report to Congress, recommended that "unpublished records of Congress deposited at the National Archives should be made available (to the public) immediately, except for those (sensitive) materials that (would) fall under the exemptions included in the Freedom of Information and Privacy Acts." The Commission noted that the records of Congress are

(7)

an invaluable source of information about the legislative process, "yet the rules governing access are so varied and inconsistent that the records themselves go unused." The Commission concluded that uniform standards for orderly disposition and access within a reasonable period of time would greatly contribute to greater public knowledge and interest in the legislative branch of the government.

The purpose of this resolution is to adopt the recommendations of the Temporary Select Committee and the Study Commission and to express the sense of the Senate that its non-current records, under proper safeguards, should be systematically available for public use. Specifically, this resolution will clarify the Secretary of the Senate's responsibility, under the provisions of Rule XI, for providing access to the records of the Senate and its committees at the National Archives.

Over the years Senate committees have made individual arrangements with the National Archives governing access. Some committees open the records at the time they transfer them. Others set a specific time period ranging from 10 to 20 years. Still others require researchers to petition them on a case-by-case basis, regardless of the records' age. In the past, many committees have not taken the opportunity to review regularly their access policies. As a result, access to many committee records at the National Archives is currently controlled by agreements prepared, as long as fifteen years ago, by chairmen who are no longer members of the Senate. Additionally, many committees have gone out of existence without making specific provisions for control of their records. This great variety of regulations has created considerable confusion and has often resulted in access to similar, but separate, bodies of records being granted in some cases and denied in others.

This resolution would result in the opening of all routine Senate records at the National Archives twenty years from the date of their creation. Sensitive records, such as investigative files relating to individuals and containing personal data, personnel records, and records of executive nominations would be opened within fifty years of their creation. All records would be subject to the National Archives' routine screening procedures.

The resolution would do nothing to interfere with Senate committees' control of their own records. They may extend or shorten the access period for portions, or all of their records, and the Secretary of the Senate would provide them the opportunity to review their existing policy at the beginning of each Congress.

BACKGROUND

The Senate maintains at the National Archives more than fifteen thousand cubic feet of its permanent records. Dating from 1789, the collection includes both floor and committee papers. It consists of manuscript journals and minutes of legislative proceedings; bills and resolutions; memoranda and reports of Senate committees; petitions and memorials from organizations and individuals; and files relating to treaties, nominations, and impeachments. These materials are basic sources for the study and understanding not only of the Senate's history and role in the legislative process, but also of the general history of the American people.

Of particular importance are Senate committee records. Properly preserved, they contain evidence of each committee's organization and functions, furnish a complete legislative history of individual bills and laws, and serve as a rich source of reference material for topics within a committee's jurisdiction. Committee records are vital component of the Senate's institutional "memory." Although much of the Senate's business is routinely placed in the public record through the publication of committee hearings. legislative reports and floor proceedings, unpublished committee records provide important additional information about Senate decision-making processes.

In 1937, acute shortage of storage space on Capitol Hill prompted the Senate to authorize its Secretary to transfer to the newly-opened National Archives Building all records which he "may deem not necessary for use in the current business of the Senate" (S. Res. 99, 75–1, March 29, 1937). Nearly a decade later the Legislative Reorganization Act of 1946 (44 U.S.C. 2114) provided a uniform policy of records disposition for the entire Congress. It stipulated that "the Secretary of the Senate and the Clerk of the House of Representatives are authorized and directed, acting jointly, to obtain at the close of each Congress, all of the non-current records of the Congress and of each committee thereof and transfer them to the National Archives for preservation, subject to the orders of the Senate and House respectively." This provision has been incorporated into Rule XI of the Standing Rules of the Senate.

Implicit in a program of records preservation is the question of records access. Even before Senate records were transferred to the National Archives in 1937, scholars recognized their value. In 1936, a National Archives appraiser examined the entire collection and concluded that "from the standpoint of historical as well as intrinsic interest, this is perhaps the most valuable collection of records in the entire United States Government." In recent times the staff of the National Archives has reportedly spent an average of 2,200 hours per year responding to mail, telephone, and in-person requests for information believed to be contained in Senate records.

Although phsycial custody of Senate and House records is now the responsibility of the National Archives, control, including decisions governing public access, remains with the originating body. For their own non-current records, individual Senate committees establish specific access policies. The National Archives is reluctant to accept records unaccompanied by a plan for eventual public access. Many routine Senate records lend themselves to immediate opening. Unprinted transcripts of public hearings are a good example of frequently requested committee files. Other records, such as staff memoranda and general legislative correspondence, tend to lose their sensitivity within a decade. Lengthier restrictions, ranging from twenty to fifty years, are appropriate in the case of investigative files, personnel records, nomination files, and documents bearing executive agency classifications. In addition to Senate-imposed restrictions, the National Archives also screens records prior to their release to ensure the protection of personal privacy and national security interests. The provisions of the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974 (4 U.S.C. 552a) do not apply to the records of Congress, but their spirit generally governs committee decisions to grant access to previously-restricted records.

In 1978, Congress enacted the Presidential Records Act (92 Stat. 2523), requiring that future presidents, upon leaving office, turn over their official records to the National Archives. Subject to carefully delineated exemptions, the records are to be opened to the public not later than twelve years after the conclusion of the president's final term. Also during 1978, the president issued Executive Order 12065 requiring that classified information "constituting permanently valuable records of the Government . . . shall be reviewed for declassification as it becomes twenty years old." In limited and highly-defined cases, classification may be extended for an additional ten years. These two measures along with the 1974 Freedom of Information and Privacy acts, underscore Congress' and the administration's commitment to opening government records at the earliest possible date consistent with personal privacy and national security considerations.

IMPLEMENTATION

Upon the adoption of this resolution, the Secretary of the Senate will write to the chairman of each standing, select, and special committee of the Senate. He will enclose a copy of the resolution and suggest that the committee review its provisions with regard to the following specific categories of committee records:

Investigative files relating to individuals and containing personal data: open through 1929;

Personnel records: open through 1929;

Executive nomination records: open through 1929;

Legislative bill files: open through 1959;

Minutes of committee meetings: open through 1959;

Executive communications: open through 1959;

Correspondence of the chairman, members, and staff: open through 1959;

Subject files: open through 1959;

Unprinted transcripts of closed hearings: open through 1959, unless marked "Secret" or "Top Secret" in which case they will be subject to review by the committee, or if the committee is defunct, the National Archives' declassification office;

Unprinted transcripts of public hearings: no restriction;

Committee publications (hearings, committee prints): no restriction (except for "confidential committee prints", which are generally preliminary drafts of committee reports, which will be open through 1959);

Petitions and memorials: open through 1959; and

Press clippings and releases: no restriction.

If a committee, acting through its chairman, chooses to establish alternative opening dates for any or all of the above categories, the chairman should so inform the Archivist of the United States, National Archives Building, Washington, D.C., 20408, with an information copy to the Secretary of the Senate. If the Archivist of the United States has not received notification from a committee within sixty days of the adoption of this resolution, he will assume that, until informed to the contrary, the provisions of this resolution will govern access to that committee's records in his custody.

The provisions of this resolution apply only to Senate records located within the National Archives Building.

COMMITTEE AMENDMENTS

The Committee on Rules and Administration has amended Senate Resolution 474 by striking "XXX" where it appears and inserting in lieu thereof "XI". These technical amendments are necessary as a result of the adoption of Senate Resolution 389, agreed to March 25, 1980, which consolidated and renumbered certain Standing Rules of the Senate.

The committee has also amended the resolution by striking "so transferred" on page 3, line 2, and inserting in lieu thereof "pursuant to section 2". This is a clarifying amendment designed to make clear that section 3(a) applies only to records which have not been made public prior to transfer to the General Services Administration.

Appendix

The following list of significant Senate records at the National Archives was prepared in 1958 at the request of the Special Committee on Senate Memorabilia. It is representative of numerous documents in the Senate's collection of interest and research value.

1. Inaugural address of George Washington. April 30, 1789.
2. Copy of John Langdon's letter to George Washington notifying him of his election. April 6, 1789.
3. Report of committee to consider under what title the Senate shall address the President. May 11, 1789.
4. Resolutions of the mayor, aldermen, and commonalty of the city of New York, tendering to Congress the use of the city hall. April 6, 1789.
5. Messages of the President of September 11, 24, and 25, 1789, and nominations for the Department of the Treasury, for the Department of War, for the Secretary of State, for the Attorney General, for Postmaster General, for the Supreme Court, and for judges and marshals.
6. Message of the President communicating a report from the Secretary of State relative to American citizens held as prisoners in Algiers. December 30, 1790.
7. Rough drafts of proposed amendments to the Constitution. 1789 (Bill of Rights).
8. Messages of the President transmitting acts of State legislatures, ratifying the articles of amendments to the Constitution proposed by Congress to the legislatures of the several States. 1790.
9. Electoral votes and credentials of Senators. 1789.
10. Inaugural address of John Adams. March 4, 1797.
11. Message of the President announcing the death of George Washington. December 19, 1799.
12. Motions and resolutions of the Senate regarding the death of George Washington, also the expenses of the funeral. 1799.
13. Reply of President John Adams to the address of the Senate on the death of General George Washington. December 23, 1799.
14. Message of the President enclosing a letter of Mrs. Martha Washington relative to resolutions of the Senate, on the death of George Washington. January 8, 1800.
15. Address of Vice President Jefferson to the Senate in retiring from the chair of the Senate. February 28, 1801.
16. Annual message of President Thomas Jefferson. December 8, 1801.
17. Message of President Jefferson to the Senate, nominating Livingston and Monroe as ministers plenipotentiary to arrange for the purchase of New Orleans. January 11, 1803.
18. Messages of President Jefferson of October 17 and 21, 1803, January 16, 1804, and copies of the treaty and conventions of April 30, 1803, between the United States and France, providing for the cession of Louisiana to the United States.

19. Message of President Madison recommending a repeal of the embargo and nonimportation laws. March 31, 1814.

20. Message of President Madison recommending a declaration of war by the United States against the Dey and Regency of Algiers. February 23, 1815.

21. Annual message of President Monroe. December 2, 1823 (Monroe Doctrine).

22. Message of President Lincoln recommending the adoption of a joint resolution by Congress in relation to the gradual emancipation of slaves. March 7, 1862.

23. Annual messages of President Lincoln. December 1, 1862, December 9, 1863, and December 6, 1864.

24. Letters of President Wilson of July 25 and August 8, 1919, to the chairman of the Senate Committee on Foreign Relations relative to the treaty with Germany, also a letter of July 11, 1918, regarding independence of Poland.

25. Impeachment records of the following persons:

1. William Blount, Fifth Congress, 1798–99.
2. John Pickering, Eighth Congress, 1803–04.
3. Samuel Chase, Eighth Congress, 1804–05.
4. James Peck, Twenty-first Congress, 1830–31.
5. William H. Humphreys, Thirty-seventh Congress, 1862.
6. President Andrew Johnson, Fortieth Congress, 1868.
7. W. W. Belknap, Forty-fourth Congress, 1876.
8. Robert W. Archibald, Sixty-second Congress, 1912–13.
9. George F. English, Sixty-ninth Congress, 1926.
10. Harold Lauderback, Seventy-third Congress, 1933.
11. Halsted L. Ritter, Seventy-fourth Congress, 1936.

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